IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 680 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDRAKANT NARANBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 680 of 2001

MR NL PATEL for Petitioner No. 1

Mr. H.L. Jani AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Patel for the petitioner and Mr. Jani, learned AGP for the respondent State. In this petition, the petitioner has challenged the impugned order of detention dated 19th December, 2000

passed by the detaining authority under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The grounds of detention have been communicated to the petitioner under section 9(1) of the PASA Act and the petitioner has been detained at Junagadh District Jail as Class II Detenu. As per the grounds of detention, the petitioner has been involved in one registered offence which is dated 19th November, 2000. The statements of the secret witnesses were recorded on 29.11.2000 and 30.11.2000 and were verified on 12.12.2000. The detaining authority has claimed privilege under section 9(2) of the PASA Act. The respondents have not filed reply to the present petition. As per the grounds of detention, the petitioner has been involved in two unregistered offences dated 5th November, 2000 and 26th November, 2000.

2. Learned advocate Mr. Patel has raised various contentions while challenging the impugned order of detention. According to him, one contention is enough to vitiate the impugned order of detention. He has submitted that the representation was made by the petitioner on 10.1.2001 and according to the white receipt and acknowledgment, said representation was received by the concerned authority on 11th January, 2001 and the said representation was rejected by the State Government on 18th January, 2001 and, therefore, he has submitted that there was delay in deciding the said representation made by the petitioner against his detention. He has submitted that after receiving the representation on 11th January, 2001, the representation has remained with the State Government upto 18th January, 2001 and there was delay of about seven days in deciding the same. Said delay has not been explained by the respondents by filing any affidavit in reply on record and, therefore, on this ground, the impugned order of detention is required to be quashed and set aside. In support of this contention, he has relied upon the decision of this court in case of Urmilaben Navnitlal Gandhi versus The Commissioner of Police, Surat City and Others reported in 1994 (2) GLH (UJ) 10.

Learned AGP Mr. Jani appearing for the respondents has submitted that according to the original file of the department, the representation was received by the department on 16.1.2001 and was decided on 18th January, 2001 wherein it has been rejected. As against that, Mr. Patel has placed on record the white slip sending the representation by Registered Post A.D. to the respondent and has also produced on record the original acknowledgment slip wherein the date of receipt

is shown to be 11th January, 2001. On the basis of this acknowledgment slip of the postal department, he has submitted that looking to the original record of the postal department, the representation forwarded on 10th January, 2001 was received on 11th January, 2001 and decided on 18th January, 2001 after the delay of about seven days which has vitiated the continued detention of the detenu and has also prejudice to the right of the detenu to have his representation decided expeditiously as per Article 22(5) of the Constitution of India.

In view of the aforesaid submissions made by the learned advocates for the parties and looking to the white slip sending representation by Registered Post A.D., dated 10.1.2001and original acknowledgment placed on record, number of both of them are same namely 931 and 932 wherein date of receipt is shown to be 11.1.2001. Therefore, looking to the original record namely white slip and acknowledgment receipt placed on record by learned advocate Mr. Patel, and in absence of the affidavit in reply filed by the respondents explaining the situation, according to my view, the unexplained delay in deciding the representation has vitiated the impugned order and has also affected the detenu's right to get his representation decided expeditiously as guaranteed under Article 22(5) of the Constitution of India. In case of Urmilaben Navnitlal Gandhi [1994(2) GLH (UJ) 10], the division bench of this court, relying upon the apex court's decision reported in AIR 1981 SC 1126 as well as the another decision of the apex court reported in AIR 1994 SC 1496, has considered the similar situation.In the said case, there was five days' delay in forwarding the representation which was not explained by the respondents therein. Therefore, the division bench of this court, following the aforesaid decisions of the aforesaid decision, held that the delay was unreasonable vitiating the continued detention of the detenu.

In this case, as per the original record placed on record by the learned advocate for the petitioner, the representation was made on 10th January, 2001 which was received by the authority on 11th January, 2001 and was decided on 18th January, 2001 and there was, thus, delay of about 7 days which has remained unexplained by the respondents since no reply to the petition has been filed. Therefore, according to my view, the respondents were not alive to the urgency of deciding the representation made by the petitioner for its consideration on merits which has adversely affected the right of the petitioner to get his representation decided expeditiously under Article 22(5) of the Constitution of

India and the continued detention has thus been vitiated in view of the delay in deciding the representation. Therefore, impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 19.12.2000 is vitiated and resulted to quash and set aside. The detenu Chandrakant Naranbhai Patel who has been detained at the District Jail, Junagadh be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

Dt.11.7.2001. (H.K. Rathod,J.)

Vyas